July 18, 2006

Mr. Robert Sydney,
General Counsel
Division of Energy Resources
100 Cambridge St., Suite 1020
Boston, MA 02114

Re: **Final Comments on the Division of Energy Resources (DOER) Proposed RPS Regulations and Draft Biomass Eligibility Guidelines**

Dear Mr. Sydney:

The undersigned submit these final comments on DOER's Proposed Renewable Portfolio Standard Regulations ("RPS") and Draft Biomass Eligibility Guidelines issued for comment on June 2, 2006.

The undersigned submitted comments to DOER on July 6, 2006. We reiterate those comments and submit for your consideration the following final comments in response to submissions made to DOER in this proceeding.

1. None of the generation of a pre-1998 biomass plant should qualify for Massachusetts RECs, except for any incremental post–1997 generation which qualifies in accordance with DOER regulations. Our previous comments pointed out language in the DOER's draft RPS regulations which could be used to allow "all or a portion" of the generation from a pre-1998 biomass plant, including relocated plants, to qualify for Massachusetts RECs. We also suggested language to rectify the drafting and plug loopholes.

2. We have substantial concerns about the use of Construction and Demolition ("C&D") wood as an Eligible Biomass Fuel. C&D wood is essentially a waste product which when burned generates hazardous air emissions and ash contaminated with hazardous metals. We suggested in our previous comments the use of the Rhode Island PUC's definition of Eligible Biomass Fuel. If DOER persists in permitting C&D wood to qualify, then strict sorting requirements would be necessary. However, the realities of construction and demolition sites are that sorting will not be accurate or verifiable and often other waste products are disposed of within the C&D wood containers. We do not agree that the intent of the Massachusetts RPS statute was to provide a financial incentive for the use of C&D wood as a fuel.

3. The Biomass Guidelines are vague, provide DOER with too much discretion to qualify biomass energy plants and should be adopted with the procedural protections of the Massachusetts Administrative Procedures Act. The use by DOER of the Biomass Guidelines will have a material impact on the rights of parties developing and owning renewable energy plants, as well as on the REC market, and should provide the clarity of regulations as well as an

opportunity for the public to comment on their content before promulgation as regulations.

4. We do not agree with certain comments suggesting that the Massachusetts REC market be opened up to allow electricity imports from generators located in other than adjacent control areas. This suggested expansion would ignore the intent of the draftsmen of the Massachusetts RPS by eliminating the nexus between the local benefits of the RPS (fuel diversity, technology development, emission reductions and capital investment and lower energy prices) and the Massachusetts rate payers who pay for it. This expansion is in conflict with the NEPOOL-GIS as well as with the guidance contained in a letter from Senator Michael Morrissey (a key draftsman of the Massachusetts RPS) to David O'Connor on September 3, 2003.[1]

Allowing imports from other than adjacent ISO-NE control areas as suggested by the comments could allow a large amount of generation from the PJM Interconnection control area to qualify for Massachusetts RECs. The recent dramatic expansions of the PJM control area (westward to the east bank of the Mississippi River and from Michigan to the Carolinas) would severely and negatively impact the Massachusetts RPS with imports of power from these long distances. Thus allowing electricity imports beyond adjacent control areas would effectively eliminate any geographic nexus with Massachusetts, as well as any assurance that Massachusetts ratepayers would receive the local benefits of renewable energy that were the primary objective of the Massachusetts legislature.

5. Stoker grate technology has been in use for many years should not be considered as advanced biomass energy technology.

6. We agree with DOER that Advisory Rulings should be eliminated. Before DOER issues any Statements of Qualification DOER should hold public hearings to solicit public input.

We appreciate your consideration of these comments.

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[1] Sen. Morrissey specifically stated that he believed that in order to qualify for the Massachusetts RPS the electricity had to be "generated in New England or imported into New England from a control area adjacent to NEPOOL..." See also a letter to similar effect from Sen. Morrissey, dated June 14, 2002.

The argument against geographic expansion beyond the adjacent control areas is also supported by the National Association of Attorneys General's Environmental Marketing Guidelines For Electricity, which provides that "Consumers should be informed, by clear and prominent disclosure, if a claim states or implies an environmental benefit which actually occurs or exists outside the geographic area in which the environmental marketing claim is being made," and that "the environmental effects of producing electricity are often, though not always, felt most acutely in the locality or region where the generation or related activity takes place."

Sincerely,

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